

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB- REGISTRY)
AT MWANZA

MISC. LAND APPEAL No. 31 OF 2022

(Originating from the decision of Mabuki Ward Tribunal in Land Application No. 03 of 2012 and the District Land and Housing Tribunal for Mwanza at Mwanza in Misc. Land Application No. 123 of 2018)

SAMSON KASUBI----- APPELLANT

VERSUS

DALA KASUBI----- RESPONDENT

JUDGMENT

Last Order date: 08.11.2022

Ruling Date: 13.12.2022

M. MNYUKWA, J.

The Appellant SAMSON KASUBI appealed against the decision of the District Land and Housing Tribunal (DLHT) of Mwanza at Mwanza in Misc. Land Application No. 123 of 2018 which was dismissed. In the record, it goes that, the parties had their dispute before the Mabuki Ward Tribunal in Land Application No. 03 of 2012 which was decided in favuor of the respondent on 28.10.2012. On 14.09.2018 the appellant approached the DLHT for Mwanza at Mwanza applying for an extension of time to appeal against the decision of Mabuki Ward Tribunal in Land Application No. 03

of 2012. The DLHT dismissed the application with costs for the reasons that the applicant failed to give sufficient reasons and account for the period of 6 years of delay.

Dissatisfied, the applicant has now appealed before this court against the decision of the DLHT with 2 grounds of appeal.

1. THAT the Honourable Chairman of the District Land and Housing Tribunal, Mwanza erred in law and in facts by reaching an erroneous decision for ignoring a reasonable cause raised and addressed by the appellant for leave to appeal out of time against the decision of the Mabuki Ward Tribunal in Land application No.03/2012, that the appellant during the time was faced by financial problem as the same seeking for legal assistance considering that the appellant is living at Segese-Kahama Municipal Council.

2. THAT the honourable Chairman of the District Land and Housing Tribunal, Mwanza erred in law and in facts for ignoring a reasonable cause raised and addressed by the appellant during the hearing of Misc. Land application NO.123/2018 for a leave to appeal out of time against the decision of the Mabuki Ward Tribunal in Land application No 03/2012, that after the decision of the Mabuki Ward Tribunal, the appellant faced with Criminal and Probate cases, Criminal Revision No.13/2012 Originating from Criminal case No.192/2012, Criminal Appeal No.05/2018 Originating from Criminal case No.82/2018, Probate Appeal

No. 05/2014, and Probate for Letter of administration of estate Cause No.06/2016, cases Conducted until 2018 hence then he realized that the time to appeal against the said decision is elapsed.

At the hearing, the appellant appeared in person while the respondent afforded the service of Mr. Chiwalo Nchai Samwel learned counsel and the hearing proceeded by the way of oral submissions.

The appellant was the first to submit and he prays this court to adopt his grounds of appeal to form part of his submissions. He briefly added that he was not satisfied with the decision of the DLHT and he prays this court to allow the appeal with costs.

Mr. Chiwalo learned counsel for the respondent opposed the appellant's submissions. On the 1st ground of appeal, he submitted that financial constraints is not a ground for extension of time as it was stated in the case of **Godfrey Surera vs Pendo Amon Byeje**, PC Civil Appeal No. 22 of 2018. He went on that the appellant before the District Land and Housing Tribunal stated that his delay was due to a reason that, he was arrested by a militia and he is now giving other reasons to this court that he was financially incapable to file his appeal on time. He insisted that the appellant failed to account for 6 years of delay.



He went on to submit that, there is no evidence on record which shows that the appellant requested legal assistance to file his application before DLHT.

On the second ground of appeal, Mr. Chiwalo claims that it is a new ground which was not determined before the DLHT. He insisted that his affidavit did not state so and the appellant did not attach any document to show that he was prosecuting a criminal case. He added that if the appellant was prosecuting a criminal case, he could also file his appeal on time. Mr. Chiwalo prays this court to adhere to the principle that litigations need to come to an end and dismiss the appeal with costs.

After the parties' submissions, I now stand a point in the determination of this appeal, and the issue before me is whether the appeal is merited. As it stands, this is a second bite after the appellant was denied an extension of time to file his appeal before the DLHT. On the appellant's first ground of appeal, he claims that, the DLHT did not consider his reasons that that time he was faced with financial constraints and he was also seeking for legal assistance. The respondent learned counsel opposed claiming that the appellant at the DLHT failed to give reasons for his delay since on his affidavit he stated that he was faced



with financial constraints, when he was submitting he claims that he was arrested by a militia.

As I perused the record, I can find a contradictory statement to justify the appellant's prayer. On paragraph 4 of his affidavit before the DLHT, he stated that soon after the Judgment was delivered he was in dilemma to file an appeal on time due to the financial arrangements to afford legal assistance which is the same version of the first ground of appeal before this court while at the hearing before the DLHT, as reflected on page 21 of the proceedings, the appellant claimed that he was not given his copies of judgment on time and he was arrested the date he was to collect the copies. As rightly held by the DLHT, the appellant did give different versions of reasons which could not justify his delay to file his appeal out of time.

It is settled law that in granting an extension of time several factors must be considered. For instance, in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Christian of Tanzania**, Civil Application No. 2 of 2010, the Court of Appeal gave factors to be considered including that: -

- 1. The applicant must account for all the period of delay;*
- 2. The delay should not be inordinate;*



3. *The applicant must show diligence, and not apathy, negligence or sloppiness of the action that he intends to take;*
4. *If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged".*

From the very first aspect of the cited case of **Lyamuya Construction** (supra), in an application of this nature, an applicant is supposed to account for every day of the delay – (see also **Hemedi Ramadhani and 15 Others v. Tanzania Harbours Authority**, Civil Appeal No. 63 of 2001 and **AMI (Tanzania) Limited v. OTTU on Behalf of P.L Assenga & 106 Others**, Civil Appeal No. 54 of 2008)

Going to the records, the impugned judgment which was subject to the application of an extension of time was delivered in 28.10.2012 whereas the appellant had 45 days to appeal. After the expiration of the statutory time that from 12.12.2012 to the time the appellant filed his application for extension of time on 14.09.2018, he has already delayed for 5 years and 9 months. Based on the requirement of the law as stated above, the appellant ought to account for every day of delay from 15.12.2012 to 14.09.2018 when he filed the application of which on records he did not do so. It is from this point I agree with the respondent's



learned counsel that the DLHT was right to dismiss the application for the appellant did not give sufficient reasons nor does he account for every day of his delay. Having said so, I find the first ground wanting of merit and therefore not allowed.

On the second ground of appeal, it was the appellant, claim that the DLHT erred for not considering the appellant reasons that after the decision of the Mabuki Ward Tribunal, the appellant faced with Criminal and Probate cases, Criminal Revision No.13/2012 originating from Criminal case No.192/2012, Criminal Appeal No.05/2018 originating from Criminal case No.82/2018, Probate Appeal No. 05/2014, and Probate for Letter of Administration of estate Cause No.06/2016, cases conducted until 2018 hence then he realized that the time to appeal against the said decision is elapsed. Going to the records, the same is not reflected and I proceed to agree with the respondent learned counsel that the same is an afterthought.

All said, I find the appeal devoid of merit and consequently, I proceed to dismiss it with no order as to costs.

It is so ordered.




M.MNYUKWA
JUDGE
13/12/2022

Right of Appeal explained to the parties.


M.MNYUKWA

JUDGE

13/12/2022

Court: Ruling delivered on 13th December 2022 in the presence of both parties.




M.MNYUKWA

JUDGE

13/12/2022